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9 IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON

10
11 UNITED STATES OF AMERICA,)

12 Plaintiff,)

13 v.)

14)
15 PORT OF TACOMA; OCCIDENTAL
16 CHEMICAL CORPORATION; MARIANA
PROPERTIES, INC.; AND PIONEER
AMERICAS LLC.)

17 Defendants.)
18

CIVIL ACTION NO.

COMPLAINT

**HYLEBOS WATERWAY
PROBLEM AREAS**

19 Plaintiff, the United States of America, by the authority of the Attorney General of the
20 United States and at the request of the Administrator of the United States Environmental
21 Protection Agency (EPA), alleges as follows:

22 INTRODUCTION

23 1. This is a civil action for recovery of response costs under Section 107(a)
24 of the Comprehensive Environmental Response, Compensation, and Liability Act

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Commencement Bay Nearshore/Tideflats
27 Superfund Site

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Environmental Enforcement Section
P.O. Box 7611
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1 (CERCLA), 42 U.S.C. § 9607(a), as amended. The United States seeks to recover costs incurred
2 for investigative and remedial activities, enforcement and other response activities taken in
3 response to releases and threatened releases of hazardous substances at the Head and Mouth of
4 the Hylebos Waterway within Operable Unit No. 1 ("OU1") of the Commencement Bay
5 Nearshore/Tideflats Superfund Site, located in Tacoma, Washington (hereinafter "the Hylebos
6 Waterway Problem Areas").

7 JURISDICTION AND VENUE

8 2. This Court has jurisdiction over this action and each defendant pursuant
9 to Sections 107 and 113(b) of CERCLA, 42 U.S.C. §§ 1331 and 1345.

10 3. Venue is proper in this District pursuant to Section 113(b) of CERCLA,
11 42 U.S.C. § 9613(b), and 28 U.S.C. § 1391(b), because the claims arose in this
12 District and releases and/or threatened releases of hazardous substances occurred in this District.

13 DEFENDANTS

14 4. At times relevant hereto, each of the defendants owns or owned and/or operates or
15 operated a facility, within the meaning of Sections 107(a)(1) and (2) of CERCLA, 42 U.S.C.
16 § 9607(a)(1) and (2).

17 5. Each of the defendants is a "person" within the meaning of Section
18 101(21) of CERCLA, 42 U.S.C. § 9601(21).

19 LAW GOVERNING CLAIMS FOR RELIEF
20 UNDER SECTION 107 OF CERCLA

21 6. Section 104 of CERCLA, 42 U.S.C. § 9604, provides that whenever
22 any hazardous substance is released into the environment, or there is a substantial threat of such
23 a release into the environment, the President is authorized to act, consistent with the National
24 Contingency Plan, to remove or arrange for the removal of, such hazardous substance.

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1 7. The President's authority under Sections 104(a) and (b) of CERCLA, 42
2 U.S.C. §§ 9604(a) and (b), as amended, has been delegated to the Administrator of EPA
3 pursuant to Section 2(e) of Executive Order No. 12316, 46 Fed. Reg. 42,237 (August 14, 1981),
4 reprinted in 42 U.S.C.A. § 9615 at 544-48.

5 8. Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), provides, in pertinent
6 part:

7 Notwithstanding any other provision or rule of law, and subject only to
8 the defenses set forth in subsection (b) of this section --

- 9 (1) the owner and operator of a vessel or a facility,
10 (2) any person who at the time of disposal of any hazardous
11 substance owned or operated any facility at which such hazardous
12 substances were disposed of,
13 * * *
14 shall be liable for --

15 (A) all costs of removal or remedial action incurred by the
16 United States Government or a State * * * not inconsistent
17 with the national contingency plan * * *

18 9. Section 113(g)(2)(B) of CERCLA, 42 U.S.C. § 9613(g)(2)(B), provides:

19 In any such action described in this subsection [an action for recovery of
20 costs under section 107 of CERCLA], the court shall enter a declaratory judgment
21 on liability for response costs or damages that will be binding on any subsequent
22 action or actions to recover further response costs or damages.

23 FACTS RELEVANT TO LIABILITY OF DEFENDANTS
24 UNDER SECTION 107 OF CERCLA

25 10. The Commencement Bay Nearshore/Tideflats Superfund Site is in
26 Tacoma, Washington.

27 11. EPA placed the CB N/T Site on the National Priorities List (NPL) in 1983. The
28 CB N/T Site consists of seven operable units ("OUs"): (1) the CB N/T sediments; (2) the

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1 ASARCO Tacoma Smelter; (3) Tacoma Tar Pits; (4) the Ruston/North Tacoma Study Area; (5)
2 CB N/T source control; (6) Asarco Sediments; and (7) Asarco demolition.

3 12. On September 30, 1989 EPA issued a Record of Decision ("ROD") that selected
4 the remedy for remediation of sediments, OU1. The ROD identified nine problem areas within
5 OU1 that required sediment cleanup. The nine problem areas are (1) and (2) the Head and
6 Mouth of the Hylebos Waterway; (3) Sitcum Waterway, (4) St. Paul Waterway; (5) Middle
7 Waterway; (6) and (7) Head and Mouth of Thea Foss Waterway; (8) the Wheeler-Osgood
8 Waterway; and (9) Asarco sediments.

9 13. Each of the defendants own, lease, or operate on, or has owned, leased or operated
10 on property along either the Head or the Mouth of the Hylebos Waterway.

11 14. At times relevant hereto, the operations conducted by each of the defendants or
12 defendants' lessees resulted in the disposal of hazardous substances at or to the Hylebos
13 Waterway Problem Areas.

14 15. There were and are "releases," as defined at Section 101(22) of CERCLA
15 42 U.S.C. § 9607 (22), and the threat of continuing releases, of "hazardous substances," as
16 defined in Section 101(14) of CERCLA, 42 U.S.C. § 9601(14), into the environment at the
17 Hylebos Waterway Problem Areas.

18 16. The releases and threatened releases of hazardous substances at the Hylebos
19 Waterway Problem Areas caused the United States to incur "response" costs, within the meaning
20 of Section 101(25) of CERCLA, 42 U.S.C. § 9601(25).

21 17. The Commencement Bay Nearshore/Tideflats Superfund Site is a "facility"
22 within the meaning of Section 101(9) of the CERCLA, 42 U.S.C. § 9601(9).

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1 FIRST CLAIM FOR RELIEF
2 CLAIM FOR INJUNCTIVE RELIEF
3 UNDER SECTION 106 OF CERCLA

4 18. Paragraphs 1-17 are realleged and incorporated by reference.

5 19. The Defendants are liable under Section 106(a) of CERCLA, 42 U.S.C. § 9606(a), to
6 take such actions as EPA determines are necessary to protect public health and welfare and the
7 environment at the Site.

8 SECOND CLAIM FOR RELIEF
9 CLAIM FOR RECOVERY OF RESPONSE COSTS
10 UNDER SECTION 107(a)(1) AND (2) OF CERCLA

11 20. The allegations of paragraphs 1 through 17 are included in this claim for
12 relief.

13 21. The United States has incurred response costs in connection with response actions
14 associated with the Hylebos Waterway Problem Areas pursuant to Section 104 of CERCLA, 42
15 U.S.C. § 9604. The United States is continuing to incur such response costs, including
16 enforcement costs associated with the recovery of funds expended as a result of the releases and
17 threatened releases of hazardous substances at or to the Hylebos Waterway Problem Areas.

18 22. As of October 31, 2002, the United States has incurred unreimbursed response
19 costs related to the Hylebos Waterway Problem Areas of at least \$ 5.7 million.

20 23. Each of the defendants is jointly and severally liable to the United States
21 under Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), for all response costs incurred by the
22 United States in connection with the Hylebos Waterway Problem Areas.

23 REQUEST FOR RELIEF

24 24. WHEREFORE, the United States respectfully requests that the Court:

25 1. Enter judgment against each of the defendants jointly and

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1 severally, for all response costs incurred by the United States in connection with the Hylebos
2 Waterway Problem Areas;

2. Enter a declaratory judgment holding each of the defendants jointly and severally liable for all future response costs incurred by the United States in connection with the Hylebos Waterway Problem Areas;

6 3. Award the United States its costs in this action;

7 and

8 4. Grant such other and further relief as is appropriate.

9 || Respectfully submitted,

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